

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

© 2024 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Protection of Traditional Knowledge in India: Is It Daydream?

SASIKUMAR C.¹ AND DR. P.R.L. RAJAVENKATESAN²

ABSTRACT

India being a diverse country which covers rich sources of traditional knowledge (TK). TK is the major part and parcel in our Indian culture. India has tied up with international forum and agreements to protection of TK, like World Intellectual Property Organization (WIPO), Convention on Biological Diversity (CBD). India has been strengthening and safeguarding of TK. The Biological Diversity Act, 2002 and the Traditional Knowledge Digital Library (TKDL) are remarkable initiatives. There are legislations which either directly or indirectly protect the TK such as The Patents Act, 1970 Geographical Indications of Goods (Registration and Protection) Act, 1999 Protection of Plant Varieties and Farmers Rights Act, 2000, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It is necessary to boost the indigenous and local communities (ILCs) for protection of TK. To address the issue of effective protection of TK is important to have multifaceted strategy which covers socio, cultural, technological, and legal aspects. This paper analyses the protection of TK in India and need for sui generis legislation for the conservation of the same.

Keywords: Biodiversity, Culture, Indigenous Knowledge and Traditional Knowledge.

I. INTRODUCTION

India has, around 700 tribal groups by a population of 104 million as per 2011 census. Around 10% of the population is made up of marginalized and vulnerable indigenous communities³, who show a significant role in carries the tradition of the community which is passed on from one generation to another generation. After Africa, these Indigenous people are the second-largest tribal group globally. TK is the important one because of safeguarding the knowledge which parallel rights of ILCs. TK are commonly understood to be the tangible and intangible ways that TK and cultures are expressed, whereas TK is usually understood to mean the know-how, skills, innovations, and practices maintained and developed by ILCs⁴. WIPO classifying

¹ Author is a Research Scholar (Internal Full Time) at VIT School of Law, Vellore Institute of Technology, Chennai, India.

² Author is a Professor at VIT School of Law, Vellore Institute of Technology, Chennai, India.

³ Census 2011, Ministry of Tribal Affairs, <https://tribal.nic.in/ST/Statistics8518.pdf> (last visited Sep 21, 2024).

⁴ WIPO, <https://www.wipo.int/tk/en/docs/ip-tk-introduction-en.pdf> (last visited Sep 21, 2024).

TK into three areas which are Traditional Knowledge, Genetic Resources, Cultural Expressions⁵. TK is available in different types and can be divided into the following types: Folklore, Cultural Heritage, Traditional Medicine. Folklore means “any productions created within the national territory by national ethnic communities, handed down from generation to generation, and forms one of the basic elements of the country's traditional cultural heritage. “Expression of folklore” means any productions consisting of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of such a community”⁶. Cultural Heritage means “Broadly speaking, national cultural heritage includes folklore, ethnographic materials, example Pharmacopoeia products, traditional medicines and psychotherapy. Cultural heritage also includes groups of historical buildings and buildings and archaeological sites. The monument includes monumental sculptural and painting architectural works, structural elements of archaeological nature, cave-inspired dwellings, and a combination of features”⁷. Traditional medicine is the culmination of all knowledge, expertise and methods derived from indigenous knowledge, beliefs and experiences from various cultures, whether or not they can be explained. It is used for both the preservation of health and the avoidance, diagnosis, enhancement, or treatment of physical and mental⁸.

II. INTERNATIONAL MECHANISM FOR PROTECTION OF TRADITIONAL KNOWLEDGE

There are numerous terms to denote TK, such as Indigenous Knowledge, Folk Knowledge, Local Knowledge and Indigenous and Tribal Knowledge etc., WIPO commonly used the term “Traditional Knowledge”. TK has been debated at many international forums, such as the negotiation of Convention on Biological Diversity (CBD), 1992 and Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 2010, TRIPS Council, International Committee on Folklore, etc., Main purposes of CBD are, the conservation of biological diversity; the sustainable use of biological resources; the fair and equitable sharing of the benefits arising out of the usage of genetic resources and conservation of biological resources. Each individual shall, almost possible and appropriate: “Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological

⁵ WIPO, <https://www.wipo.int/tk/en/#> (last visited Sep 24, 2024).

⁶ WIPO, <https://www.wipo.int/tk/en/folklore/> (last visited Sep 24, 2024).

⁷ UNESCO, <https://uis.unesco.org/en/glossary-term/cultural-heritage> (last visited Sep 24, 2024).

⁸ WHO, https://www.who.int/health-topics/traditional-complementary-and-integrative-medicine#tab=tab_1 (last visited Sep 24, 2024).

diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices”⁹. Safeguard and strengthen customary use of biological resources in harmony with TK and cultural performs that are compatible with conservation use requirements¹⁰. Encourage the Indigenous and local communities (ILCs) to progress and implement remedial action in degraded areas where biological diversity have been reduced¹¹. Unless the party specifies otherwise, access to genetic resources shall need the contractual party providing those resources to give their prior informed consents (PIC)¹². The objective is to fair equitable to the contracting party that provides the genetic resources the benefits of research and development as well as the advantages that come from using the resources for commercial and other purposes. Such sharing must follow mutually agreed upon guidelines¹³. Exchange of information shall include exchange of results of technical, scientific, and socio-economic research, along with information on training and surveying programmes, specialized knowledge, TK and combination with technologies are shall also where feasible, include reparation of information¹⁴. Population concerned shall not be excluded without their consent from their customary territories except in accordance with state laws and regulatory for reasons relating to state’s security or in the interest of state’s economic development or the health and wealth population¹⁵. ILCs shall entitled the full amount of human rights and fundamental freedom without any discrimination. Male and female members of these peoples shall be treated equally under the Convention's provisions¹⁶. Special measures shall be recognized as appropriate for maintenance the persons, institutions, property, labour, cultures and environment of the peoples concerned¹⁷. TK and associated innovations and practices would aim to do the following, encourage and respect for and the preservation and protection of TK and innovations. Promote fair and unbiased sharing the benefits of such knowledge. Encourage the use of that knowledge and innovation for the benefit of mankind. Arrange and organize the administration of that knowledge. Encourage the development of economic and legal frameworks that will enable the communities who already possess that expertise to grow sustainably. support the continuation of established biodiversity conservation programs¹⁸.

⁹ CBD, art. 8(j), June 5, 1992.

¹⁰ *Id.* art. 10(c) of CBD.

¹¹ *Id.* art. 10(d) of CBD.

¹² *Id.* art. 15(5) of CBD.

¹³ *Id.* art. 15(7) of CBD.

¹⁴ *Id.* art. 17(2) of CBD.

¹⁵ ILO, *C-107*, art.12, June 26, 1957.

¹⁶ ILO, *C-169*, art. 3(1), June 27, 1989.

¹⁷ *Id.* art. 4(1).

¹⁸ WIPO, https://www.wipo.int/tk/en/global_reference.html (last visited Sep26, 2024).

ILCs are equal to all other peoples, according to the Declaration. They ought to be free from all forms of discrimination when exercising their rights. The Declaration has acknowledged the vital need to maintain and advance the intrinsic rights of ILCs, predominantly their rights to their properties, territories, and resources, which are consequent from their political, economic, and social structures also from their cultures, spiritual ethnicities, histories, and philosophies. This respect for TK was also recognized in the Declaration. Traditional practices and culture support fair and sustainable development as well as responsible environmental management. It recognizes that ILCs are free to choose their political grade and to seek economic, social and cultural development in addition to having the right to self-determination. Additionally, it has accepted and reiterated that ILCs have the collective rights necessary for their constant existence, well-being and progress as a people, and that they are entitled to all human rights recognized by international law without discrimination¹⁹

III. PROTECTION OF TRADITIONAL KNOWLEDGE IN INDIA

India is one among the 12 super-biodiversity states in the world. Famous for its rich biodiversity heritage, India has recorded multiple species of animals and plants in 10 bio-geographic areas. India is recognized as a center of cropdiversity and is home to many wild species of related crops. India is also one of the 12 major centers of agricultural production and is rich in agricultural biodiversity. Due to its extraordinary biodiversity and natural abundance, India has wealth of TK about the properties and use of these biological resources. TK is the basis of cultural heritage. Most ILCs are located in areas with the highest biodiversity and diversity. For them, this natural world is a way of life and part of their cultural existence. ILCs provide a collection of traditional information for conservation and sustainable use²⁰. Access to genetic resources and compiled knowledge by foreign entities, organizations or companies, to confirm equitable sharing of benefits rising out of the use of these resources and knowledge to the country and the ILCs. A three-tier system at the national, state and local level is established as following, 1). National Biodiversity Authority (NBA), shall handle all issues relating to requests for access made by foreign people, institutions, or businesses, as well as all issues pertaining to the transfer of research findings to any foreigner. 2). State Biodiversity Boards (SBB) would be in charge of all issues pertaining to Indians' access for commercial purposes. The Indian business will have to notify the relevant SSB in advance about the usage of biological resources.

¹⁹ UNDRP, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-%20peoples.html> (last visited Sep 26, 2024).

²⁰ MAHAK AAGARWAL, <https://blog.ipleaders.in/ipr-vis-vis-traditional-knowledge/> (last visited Sep 26, 2024).

The establishment of Biodiversity Management Committees (BMC) in each area will be required of institutions of local self-government for purposes of biodiversity preservation, sustainable use, recording, and archiving of TK and biodiversity-related knowledge. A National Biodiversity Fund(NBA) is being comprised with the end goal of impartial advantage sharing. The NBA will guarantee that impartial advantage sharing is made during the usage of natural assets and the information connecting with them²¹.

The Department of AYUSH (Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy), Ministry of Health and Family Welfare and the Council of Scientific and Industrial Research (CSIR), Ministry of Science and Technology, collaborated on the Traditional Knowledge Digital Library (TKDL) project in 2001, the CSIR, it was being implemented. TKDL for Indian Systems of Medicine was developed by an interdisciplinary team of experts in traditional medicine (Ayurveda, Siddha, Unani and Yoga), patent examiners, IT specialists, scientists, and technical officers. Avert the granting of patents for products advanced utilizing TK where has been slight, if any, inventive step. Aims to act as a connection between information recorded in ancient Sanskrit and patent examiners (with its database holding information in a language and format reasonable to patent examiners). Facilitates access to information not simply available to patent examiners, thereby minimalizing the possibility that patents might be granted for “inventions” connecting only minor or immaterial modifications²². 'Wrongful patents' influence our local area and economy, yet in addition questions our personality. Through conventional information, we monitor and safeguard the biodiversity and the privileged insights passed predecessors. The documentation of customary information forestalls the possibilities of bio-robbery consequently shielding it from abuse and misappropriation by outsiders. TKDL the first of its sort earlier workmanship data set of customary information worldwide and has demonstrated to be a strong restriction against bio-robbery. While being perceived universally as an extraordinary exertion, TKDL has set target in TK security all over the world²³.

Forest rights of forest tribes on ancestral lands and their habitats have not been enough perceived in India in the pre- and post-free system. This has brought about a noteworthy unfairness to woodland clans and other conventional timberland species that are essential to the endurance and manageability of the backwoods environment. The Government of India alluded to the well-

²¹ Prof. S. Kannaiyan, *Salient features of BIOLOGICAL DIVERSITY ACT -2002*, NBA (2007).

²² WIPO, *About the Traditional Knowledge Digital Library*, https://www.wipo.int/meetings/en/2011/wipo_tkdl_del_11/about_tkdl.html (last visited Sep 28, 2024).

²³ Akshatha Shetty, *Traditional knowledge digital library in India: Impact on Patent examination*, [https://blog.ipleaders.in/traditional-knowledge-digital-library-in-india-impact-on-patent-examination/\(last visited Sep 28, 2024\)](https://blog.ipleaders.in/traditional-knowledge-digital-library-in-india-impact-on-patent-examination/(last%20visited%20Sep%2028,%202024)).

established frailty of backwoods staying clans through the sanctioning of regulation perceiving the entrance freedoms of timberland possessed clans and other customary woods tenants, including the people who had to move their home because of state improvement intercessions. Acknowledges and grants traditional knowledge and indigenous knowledge peoples the right to use forest land. Who have been living in such backwoods for ages however whose freedoms couldn't be recorded. It likewise lays out a system for the enrollment of woods privileges hence conceded and the idea of the proof expected for such acknowledgment and the giving of forest land rights. The law specifies that the perceived privileges of clans and other conventional forest occupants incorporate liabilities and powers for reasonable use, protection of biodiversity and support of natural equilibrium, in this way reinforcing the forest preservation system, clans committed to forest living space and other customary forest dwellers. The law perceives the following forest rights of tribes inhabiting forests and traditional forest dwellers in every forest lands. Under the scheme of the law, Gram Sabha is the power to start the cycle to decide the nature and degree of individual or local area forest rights or both that can be given to booked clans and other customary traditional forest dwellers in Limits of its purview under the Act. Gram Sabha decides the ranger service privileges of those impacted by the receipt of cases, uniting and confirming them, and setting up a guide that portrays the extent of each suggested guarantee in the way endorsed for the activity of these rights. The Subdivisions Committee and the District Committee are integrated under the Act to depend on petitions relating thereto. State administrative boards are laid out to regulate the course of acknowledgment and giving of forest rights and to submit to the nodal organization the endlessly reports that might be mentioned by the organization.

IV. NEW DIMENSIONS OF PROTECTION OF TRADITIONAL KNOWLEDGE

Traditional Knowledge Digital Library (TKDL) is a multilingual record with 34 million prepared pages of data on about 22,60,000 medicine formulas. Originally intended as a tool to help patent officers at key intellectual property (IP) offices with their prior art searches, the Traditional Knowledge Database is a unique responsibility of Indians traditional medical knowledge. India's TKDL providing a prevailing weapon in the country's fight against erroneous patent, sometimes referred to as "Biopiracy"²⁴. GI's could help traditional manufacturers capture the full economic benefits from their biocultural products, preferably waiting for conceivable benefit-sharing. GI's can encourage traditional production practices, which proposes that they could also rejuvenate production of crops and livestock breeds of

²⁴ WIPO, https://www.wipo.int/wipo_magazine/en/2011/03/article_0002.html (last visited, Sep 30, 2024).

Sustainable Development²⁵. This knowledge helps modern industries like agriculture in addition to those who depend on it on every day. Many daily necessities, such as cosmetics, health care items, and plant-based pharmaceuticals, come from traditional knowledge. Other significant items of this type include handicrafts, agricultural products, and non-wood forest products. Sustainable development can greatly benefit from the application of traditional knowledge. A substantial portion of the world's genetic resources are found in the regions where the majority of indigenous and local communities are located. For thousands of years, a large number of them have sustainably produced and utilized biodiversity. It has been demonstrated that some of their methods improve and encourage biodiversity locally and support the preservation of healthy ecosystems. Beyond their function as administrators of natural resources, indigenous and local groups make significant donations to biodiversity conservation and sustainable use. Their abilities and methods offer the international community important information and a practical framework for biodiversity policies. Additionally, ILCs are the ones utmost actively involved in preservation and sustainable use because they are on-site and have deep knowledge of the local surroundings.²⁶

V. CONCLUSION

Inclusive approach for preservation and protection of traditional knowledge would therefore consider the community, regional, national, and international dimensions. Stronger incorporation and synchronization between every level brings the whole effect. Many groups, countries and local organizations works to deal with these levels. Domestic law is now the key mechanisms for attaining traditional safeguard and real benefits knowledge career, like TKDL in India. Subcommittees in various countries have found existing intellectual property rights useful and their traditional strategy for protecting knowledge utilizes intellectual property system. There are different approaches to protection of traditional knowledge in different countries and regions, reflecting the diversity of traditional knowledge itself and its social context, some common elements appear in political debate. For example, it is emphasized that protection should reflect the aspirations and expectations of traditional things being a bearer of knowledge and also, we need to promote respect for indigenous peoples and customs practices, protocols and laws in a possible extent. It is also an appropriate to look into the economic aspects of development traditional knowledge and to effectively participate in traditional knowledge career in the sense of prior Informed consent. Traditional knowledge protection must also be

²⁵ RUCHI PANT, *Protecting and promoting traditional knowledge in India*, may. 2015.

²⁶ United Nations Decade on Biodiversity, <https://www.cbd.int/doc/c/f490/ab38/838cee48fbbc87a1d448811d/post2020-ws-2019-01-presentation-scbd-01-en.pdf> (last visited, Sep 30, 2024).

affordable, Easy to understand and accessible to the owner. International IP law frameworks inside and outside the IP system is also important compassion. While traditional knowledge is linked to genetic resources, the distribution of resources and profits should be consistent with the measures established under the Convention on Biological Diversity (CBD) which allows benefit sharing from the use of genetics to financial resources.
